IN THE SUPREME COURT OF THE STATE OF DELAWARE

QUINN ALAN OLIVER,[1]	§	
	§	No. 511, 2011
Respondent Below,	§	
Appellant,	§	Court Below: Family Court of
	§	the State of Delaware, in and for
v.	§	New Castle County
	§	
STEPHANIE THOMAS-MARTIN,	§	File No. 09-03-06
	§	Petition No. 09-09099
Petitioner Below,	§	
Appellee.	§	

Submitted: February 15, 2012
Decided: March 2, 2012

Before **HOLLAND, BERGER** and **JACOBS**, Justices.

O R D E R

This 2nd day of March 2012, upon consideration of the briefs of the parties and the record in this case, it appears to the Court that:

1. Quinn Alan Oliver, the respondent-below ("Oliver"), appeals from a Family Court order granting the Petition of Stephanie Thomas-Martin ("Martin") to terminate Oliver's parental rights in the parties' 11-year-old daughter ("child"). Oliver contends that several of the Family Court's findings—including that Oliver cannot adequately plan for his daughter—were not supported by the record. He

[1]The Court, *sua sponte*, has assigned pseudonyms to all parties pursuant to Supr. Ct. R. 7(d).

also claims that he was denied the opportunity to present part of his case. We find no merit to these claims and affirm.

2. In 2001, Martin gave birth to a daughter fathered by Oliver. Because Martin was 17 years old at the time, her mother received primary residential custody of the child. After Martin turned 18, she was granted primary residential custody, and Oliver was granted joint custody. Martin and Oliver never married nor lived together with the child. In October 2001, after Martin had moved with the child to Baltimore, Oliver was arrested and later convicted of Aggravated Assault and Robbery. He has been in prison for most of his daughter's life.

3. During his first incarceration, Oliver corresponded with Martin and his daughter, but the contact diminished following his transfer to a more distant prison in Frackville, Pennsylvania. The record on appeal does not disclose the duration of each of Oliver's prison terms. It appears, however, that Oliver had been released by 2004 when, with a visitation petition pending, he again was arrested and incarcerated. Oliver was released in December 2006, following several months in a halfway house, and then was imprisoned again in March 2007 on probation violations. Oliver remained incarcerated at the time of the trial, in late 2009, on Martin's petition to terminate parental rights. Oliver testified at that trial that he was scheduled to be released in October 2010. The record does not disclose whether Oliver is currently incarcerated, but the Family Court's August 2011

opinion denying Oliver's motion for reargument suggests that he was in prison at that time.

4. Trial testimony established that Oliver made efforts to help care for his daughter in her early years, purchasing clothing and sneakers, and writing letters regularly from prison. Oliver also testified that he saved more than $1,700 for his daughter in an account opened during his incarceration in 2003, but was forced to deplete those funds in order to pay legal costs. Oliver claimed that "from time to time" he asked family members to send money to Martin for his daughter, but there is no evidence that any payments were made. Oliver further contended that, although the last time he gave clothing to his daughter directly was in 2006, he had also sent clothing to his mother to "hold in her basement for the Child." That clothing, however, was never delivered. Finally, Oliver testified that his only means to reach Martin or to communicate with his daughter was through Martin's mother. But, as the Family Court skeptically observed, Oliver's uncle and then-girlfriend[2] had been able to reach Martin directly in recent years at a phone number that Martin still used as of 2011.

5. Martin moved to Delaware in 2007, married in 2008 and thereafter had a son with her husband. The Family Court found that Martin's "husband has been

[2] Oliver was married at the time of trial, but further details of Oliver's personal life are unclear from the record.

the only father figure in [Oliver's daughter's] life for a number of years," has been called "dad" by the child, and is involved in various parental activities (such as school conferences and library visits). According to Martin, Oliver saw his daughter five times between his release in December 2006 and his re-incarceration in March 2007—all at Oliver's mother's home. In 2007, Oliver's mother moved to North Carolina and ceased contact. The Family Court found that Oliver has not seen his daughter since 2007 and has "never financially supported" her.

6. According to Oliver, on two occasions before trial, Oliver's wife and his uncle were in court and were prepared to testify at the trial in his favor. At that time Oliver was incarcerated. In both instances, however, the trial was either not held or was delayed.[3] When the trial finally occurred in December 2009, Oliver claims, his witnesses "were not permitted to miss work for a third time" and, therefore, did not testify. In 2011, following procedural delays unrelated to this appeal, the Family Court issued its opinion determining that Martin had proved, by clear and convincing evidence, that Oliver had "failed to plan" for his daughter. Analyzing and applying the statutory best-interests-of-the-child factors, the court ordered termination of Oliver's parental rights as being in the child's best interests. This appeal followed.

[3] The first date was for a pretrial hearing, the second date was for trial, which was delayed because prison staffers where Oliver was incarcerated were unavailable that day.

7. Oliver raises four arguments on appeal: (i) the record did not support the finding that Oliver failed to plan for his daughter and is unlikely to be able to plan for her upon his release from prison; (ii) the record did not support the finding that Oliver's mother had no relationship with, nor supported, the child; (iii) the court wrongfully denied Oliver the opportunity to present all of his evidence; and (iv) the Family Court's basis for distinguishing a 2008 decision was erroneous. On appeal, this Court conducts a "limited review" to ensure the Family Court's factual findings are "sufficiently supported by the record and result from an orderly and logical . . . process."[4] Questions of law, including "erroneous interpretations of applicable law," are reviewed *de novo*.[5]

8. Under 13 *Del. C.* § 1103(a)(5), the Family Court may terminate a parent of his or her parental rights for "failure to plan" for the child upon a showing, by clear and convincing evidence, that: (i) the parent failed to plan adequately for the child's physical, mental, and emotional needs; (ii) the child has been in the home of a step parent for at least one year; and (iii) the parent is "incapable" of discharging his parental responsibilities, leaving "little likelihood" he will be able to do so in the future. Once that showing is made, the Family Court must then

[4] *In Interest of Stevens,* 652 A.2d 18, 23 (Del. 1995).

[5] *In re Heller*, 669 A.2d 25, 29 (Del. 1995).

perform the best-interests-of-the-child analysis under 13 *Del. C.* § 722(a), to ensure that the termination of parental rights is in the best interests of the child.[6]

9. Oliver contends that the evidence adduced at trial did not support the court's finding that he failed to plan for his daughter. He points to his contributions early in the child's life, his efforts (including his requests of family and friends) to support his daughter while he was imprisoned, and his plan to "return to his construction business upon his release." Citing this evidence, Oliver claims that it "is clear from [his] testimony at trial that he made every attempt to financially and emotionally support his Child to the best of his ability, whether he was incarcerated or not."

10. It is undisputed that by the time of trial, Oliver had not seen his daughter for more than a year. By the time of the Family Court's post-trial decision in 2011, more than three years had passed. The Family Court found that although Oliver had some involvement with his child in her early years, he "has never planned for the Child's needs, demonstrated no ability to do so . . . nor presented any viable plan for the Child's future." Oliver, in the court's words, "has

[6] In *Shepherd v. Clemens*, 752 A.2d 533, 536-37 (Del. 2000), we described this analysis as follows:

> In Delaware, the statutory standard for terminating parental rights provides for two separate inquiries. First, there must be proof of an enumerated statutory basis for the termination. Second, there must be a determination that severing the parental right is in the best interest of the child.

barely been a bystander to her life to date." The court was also skeptical of Oliver's claims that he was unable to communicate with or reach his daughter in recent years through Martin, noting that Martin "did not reject communication or correspondence sent to her" and that family and friends close to Oliver had been able to contact Martin. Those facts support the trial court's conclusion that Oliver had failed to plan for his child's needs, and there was "little likelihood" he would do so in the near future. Therefore, Oliver's "failure to plan" claim fails.

11. In weighing the best-interests-of-the-child factors, the Family Court considered the child's interactions with her paternal grandmother, and found that the child "had no relationship with [her] . . . Paternal Grandmother." Oliver claims this finding was erroneous, because he presented evidence that his mother and his daughter had "slightly sporadic contact" before his mother moved to North Carolina in 2007. But, the undisputed fact that all contact had long since ceased supports the Family Court's finding that no relationship existed as of 2011. That finding was a logical conclusion from the record evidence, and Oliver's claim of error cannot succeed.

12. Oliver next claims that he was "unfairly prejudiced" by the inability of two of his witnesses to testify despite their twice being present in court, in violation of his procedural due process rights. Oliver argues that "[p]rocedural due process requires a reasonable opportunity to . . . present evidence on the charge or

accusation."[7] The record discloses that Oliver had such a reasonable opportunity. Oliver's counsel specifically requested that Oliver's mother testify by telephone, but apparently made no such request for these other witnesses. That Oliver's counsel requested and was granted telephonic testimony from one of Oliver's witnesses strongly suggests the same accommodation was available for the two witnesses at issue here. Oliver offers no basis to conclude otherwise, nor has he shown that he exerted any effort to make such arrangements. Oliver merely faults the trial court for "fail[ing] to act and allow[ing] the proceedings to continue," after Oliver's counsel noted the witnesses' absence. The trial court had no obligation, *sua sponte*, to prepare Oliver's case for him, and Oliver has made no showing on appeal that the court wrongfully interfered with Oliver's own attempts to do so.[8] Therefore, this claim lacks merit as well.

13. On a motion for reargument, Oliver claimed that Martin's petition was controlled by the Family Court's decision in *S.E.J. v. D.T.W.*[9] In that case, an incarcerated father was found to have planned adequately for his child's needs, for

[7] For this statement of law, Oliver cites to *Orville v. DFS*, 759 A.2d 595, 598 (Del. 2000).

[8] This Court has previously denied a respondent's due process claim where that person "received ample notice of the impending proceedings, had adequate opportunity to consult with court-appointed counsel and prepare for trial, and was obviously aware of the ramifications upon her parental rights should the court" grant the petition to terminate the person's parental rights. *In re Heller*, 669 A.2d 25, 31 (Del. 1995).

[9] 2008 WL 4698511 (Del. Fam. Ct. Sept. 25, 2008).

which reason the mother's petition to terminate the father's parental rights was denied. Quoting this Court's opinion in *In the Matter of Jones*,[10] the *S.E.J.* court reasoned that "incarceration alone does not rise to failure to plan."[11] Oliver argues on appeal that the Family Court erroneously distinguished *S.E.J.* from his case on the basis that in *S.E.J.* the father had paid between $100 and $200 in monthly child support from prison and had written letters to the child,[12] whereas Oliver had done neither recently. In *S.E.J.*, the mother had also actively prevented the father from having contact with the child. The Family Court found no such facts were present here.

14. Oliver claims that the trial court's analysis of *S.E.J.* was wrong, because he had in fact provided "cash, clothing, and shoes during those times when he was not incarcerated," while asking "friends and relatives to send any money to the Child" when incarcerated. Oliver states that he was making about $20 per month in prison and, therefore, could not send the amount of support money that the father in *S.E.J.* provided. Moreover, Oliver claims, he "depleted the bank account

[10] 538 A.2d 1113 (Del. 1988). The relevant section follows:

> [The Family Court] found that although a person is incarcerated, such a person has means available to both contact the child and assist the child in satisfying [the child's] needs either directly to a limited extent but certainly indirectly through friends or relatives.

[11] 2008 WL 4698511 at *2.

[12] *Id.* at *3 (finding father had sent between 15 and 20 letters and cards to child and made continuous monthly financial contributions for more than one year).

. . . to secure his release from prison so that he could see his Child," and that letters he wrote to his child were sent to Oliver's mother and/or are in the possession of Oliver's wife, but were never sent to the child.

15. The Family Court did not erroneously distinguish *S.E.J.* Putting aside the amount of support money involved in *S.E.J.*, that case involved persistent efforts by the father to provide assistance to, and have contact with, his child.[13] Here, the Family Court was skeptical—for good reason—of Oliver's claim that he had no way to contact the child or Martin directly in recent years, given that Oliver's friends and family had had no trouble doing so. That finding suggests that, had Oliver truly wanted to send letters or even a small amount of money to his daughter, he could easily have found a way to do that. Therefore, *S.E.J.* was properly distinguished, and the trial court's factual findings were logical and supported by the record.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Family Court is **AFFIRMED**.

BY THE COURT:

/s/ Jack B. Jacobs
Justice

[13] *Id.*